THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 6169 of 2002

O r d e r:

The petitioner is working with the respondents-APSRTC as Senior Assistant. On the ground that he failed to incorporate a clause relating to increase of rent by 10% and 15% in the 4th and 5th year on the licence fee in the Tender Schedule for lease of Canteen, he was issued a charge sheet dated 02.05.1998 by respondent No.3. The petitioner submitted his explanation thereto on 11.05.1998. Dis-satisfied with the explanation, an enquiry was conducted, and based on the enquiry report, respondent No.4 vide orders dated 14.10.1998 imposed punishment of postponement of increment for a period of two years with cumulative effect, besides treating the period of suspension as leave due. Assailing the punishment, the petitioner filed appeal before respondent No.3, who vide proceedings dated 05.10.1999, modified the punishment to that of postpone of increment for a period of one year with cumulative effect, besides treating the period of suspension as leave due. The petitioner assailed the order of respondent No.3, the petitioner filed writ petition in W.P. No. 14963 of 2000, which was dismissed by this Court vide order dated 23.04.2001 giving liberty to the petitioner to file review. Thereafter, the petitioner filed review petition, and respondent No.2, vide order dated 14.09.2001, rejected the review confirming the order of respondent No.3. Hence, the petitioner filed the writ petition.

The learned counsel for the petitioner submitted that punishment imposed by respondent No.4, modified by respondent No.3 and confirmed by respondent No.2, cannot be sustained for the reason that the respondents did not follow the instructions issued by the Managing Director in Circular No. 3/97, dated 12.05.1997 with regard to the procedure to be followed after completion of domestic enquiry. He submitted that respondent No.4 after completing the enquiry, was required to furnish copy of the enquiry report along with the findings and give reasonable opportunity to the delinquent to comment on the enquiry report, and only after receiving the objections, if any, was required to determine the punishment, but respondent No.4

without furnishing copy of the enquiry report and the findings and without giving reasonable opportunity to the petitioner to comment on the report, had straight away imposed punishment, which was modified by respondent No.3 in appeal and confirmed by respondent No.2 in review. In support of his submission that non-furnishing of statements of witnesses and enquiry report amounts to denial of reasonable opportunity, the learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court in **Muvvala Narasimha v. Works Manager APSRTC**. He, therefore, prayed that the impugned orders be set aside and the writ petition be allowed.

The learned Standing Counsel for the respondents-APSRTC submitted that the due to the acts of omissions of the petitioner, namely not including the clause relating to increase of rent in the 4th and 5th year of the lease period in the Tender Schedules, the respondents were put to loss as the Canteen for which the tender was issued, was kept closed due to the litigation that ensued between the respondents and the bidder, on account of the act of omission of the petitioner. He submitted that the petitioner himself admitted his mistake in his reply to the charge. The petitioner was provided all reasonable opportunities to defend his case. Though respondent No.4 imposed punishment of postponement of two increments with cumulative effect, respondent No.3 considering the long service of the petitioner, modified the punishment to that of postponement of one increment with cumulative effect, and respondent No.2 considering the punishment, as modified by respondent No.3 to be appropriate, confirmed the same, and no exception can be taken thereto.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents. I have also perused the original record produced by the learned Standing Counsel for the respondents.

The instructions issued by the Managing Director in Circular No.3/97, dated 12.05.1997, with regard to the procedure to be followed after completion of domestic enquiry, upon which the learned counsel for the petitioner placed heavy reliance, are not applicable to the case of the petitioner, for the reason that the said instructions, which were issued by the Managing Director in pursuance of the judgment of the apex Court in **Managing Director, ECIL v. Karunakar,** are required to be followed only if the punishment proposed to be imposed is one of the penalties specified in Regulation 8(vii), (viii) and (ix) of APSRTC Employees (Classification,

Control and Appeal) Regulations, 1967. Admittedly, the punishment proposed and imposed on the petitioner is not the one specified in Regulation (vii), (viii) and (ix), but is one specified in Regulation (iv), namely with-holding of increments, which is lesser punishment when compared to the punishments specified in Regulation 8(vii), (viii) and (ix), namely reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale, removal from service of the Corporation which does not disqualify from future employment and dismissal from the service of the Corporation which ordinarily disqualifies from future employment. Therefore, for failure on the part of respondent No.2 in following the instructions by the Managing Director in the afore-mentioned Circular, it cannot be said that the punishment imposed on the petitioner cannot be sustained. Reliance placed by the learned counsel for the petitioner on the judgment of the Division Bench of this Court in **Muvvala Narasimha v. Works Manager, APSRTC**, does not help the petitioner in any manner, for the reason that the Division Bench in the said case was dealing with a case of removal from service, which is not the case on hand, and when it was pointed out to the Division Bench that order of removal from service came to be passed without furnishing of statements of witnesses and enquiry report, the Division Bench held that it amounted to denial of reasonable opportunity.

Be that as it may, it is the specific case of the respondents that all reasonable opportunities were provided to the petitioner at the time of conducting enquiry, that the petitioner was furnished all the documents required by him to defend the case. The petitioner, as can be seen from the record produced by the respondents, in his reply to the charge memo, has himself admitted that he failed to incorporate the clause relating to increase of rent in the 4^{th} and 5^{th} year in the Tender Schedule for lease of the Canteen, though he had subsequently changed his stance in his reply to the charge-sheet. Even assuming that the petitioner was not furnished the enquiry report and the statements of the witnesses, the petitioner having admitted that due to mistake he did not incorporate the clause relating to increase of rent in the Tender Schedule, it is quite un-understandable, how he could have improved upon his case, if the copy of the enquiry report and statements of the witnesses were furnished to him. At any rate, it is the specific case of the respondents that on account of the act of omission of the petitioner in incorporating the important clause, litigation ensued between the respondents and the bidder, which resulted in the

respondents suffering loss as the canteen for which the tender was issued, was kept closed. For the act of omission of the petitioner, which stood proved in the enquiry, although respondent No.4 had imposed punishment of postponement of two annual increments with cumulative effect and treating the period of suspension as leave due, respondent No.3 considering the long service put in by the petitioner, modified the punishment to that of postponement of one annual increment with cumulative effect and treating the period of suspension as leave due, which was confirmed in review by respondent No.2, and for the act of omission of the petitioner, which resulted in loss to the respondents, it cannot be said that the punishment as modified by respondent No.3 in appeal and confirmed in review, is harsh warranting interference by this Court.

For the going reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 13th April, 2006.

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